

Decision 04-02-028 February 11, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.	Application 00-11-038 (Filed November 16, 2000)
Emergency Application of Pacific Gas and Electric Company (U 39 E) to Adopt a Rate Stabilization Plan.	Application 00-11-056 (Filed November 22, 2000)
Petition of The Utility Reform Network for Modification of Resolution E-3527.	Application 00-10-028 (Filed October 17, 2000)

**ORDER MODIFYING DECISION (D.) 04-01-028 AND DENYING
REHEARING OF THE DECISION, AS MODIFIED**

In this order, we dispose of the application filed by Southern California Edison Company (“Edison”) for rehearing of Commission Decision (D.) 04-01-028 (“Decision”). D.01-04-028 established an interim allocation of the Department of Water Resources’ (“DWR”) 2004 revenue requirement, consistent with the allocation methodology adopted in D.02-12-045 for DWR’s 2003 revenue requirement. Final allocation of DWR’s 2004 revenue requirement is expected to be determined later this year. The Decision also implemented a “true-up” of DWR’s 2001-2002 Revenue Requirement. As part of the true-up, Edison requested that we consider changing the methodology for allocating DWR’s Bond Charge established in D.02-10-063 (“Bond Charge Decision”), which allocated the

Bond Charge on an equal cents/kWh basis and established a uniform bond charge.¹ We declined to do so. (D.04-01-028, p. 10.)

Edison filed a timely application for rehearing of the Decision.² In its rehearing application, Edison maintains that the Commission erred when it decided to maintain the allocation methodology for DWR's bond charge revenue requirement established in D.02-10-063 because the methodology: (1) violates Public Utilities Code section 451; (2) is inconsistent with prior Commission decisions; (3) violates Public Utilities Code section 1757; and (4) violates Public Utilities Code section 1705.³ Pacific Gas and Electric Company ("PG&E") and San Diego Gas & Electric Company (SDG&E) filed responses opposing Edison's rehearing application.

Edison first maintains that the allocation methodology is inequitable because the financial obligation of the Bond Charge Revenue Requirement ("BCRR") allocation does not correspond to the allocation of bond proceeds to each IOU's customers (the allocation of the Bond Proceeds is shown in Appendix B, "Adopted True-Up Calculation for 2001-2002 DWR Power Charges"). It contends that this will result in a subsidy to PG&E and SDG&E customers, and thus, discriminates against Edison customers in violation of section 451.⁴ This assertion is without merit.

¹ D.02-10-063 was subsequently modified by D.02-11-074 and D.02-12-082. The modifications did not change the allocation methodology. In this rehearing memo, all references to the Bond Charge Decision are to the final version, which can be found as Attachment A of *Order Granting Rehearing of Decision 02-11-074* (D.02-12-082).

² On January 21, 2004, Edison filed a Petition for Modification of D.04-01-028, requesting that the Decision be modified to allocate DWR's Bond Charge based on a cost causation methodology. In this Order, we are only disposing of Edison's rehearing application, not its Petition to Modify. Further, this Order does not prejudge our actions in response to Edison's petition.

³ Unless otherwise noted, all statutory references are to the Public Utilities Code.

⁴ Section 451 requires that all charges demanded or received by a public utility for products provided or services rendered be just and reasonable.

As the title of Appendix B clearly indicates, only DWR's Power Charge, not its Bond Charge, was trued-up. In this Appendix, the allocation of bond proceeds was used to determine how much of the 2001-2002 power costs were not paid for from bond proceeds and therefore had to be recovered from DWR's Power Charge. In other words, this allocation was simply a necessary step in determining the final true-up of the allocation of DWR's Power Charges for 2001-2002.

As we have previously stated, we have allocated bond costs and power costs differently because DWR's intervention in the power market served at least two purposes: (1) to provide power and (2) to stabilize the electricity grid. (See *Opinion Adopting a Rate Agreement Between the Commission and the California Department of Water Resources* [D.02-02-051], pp. 40, 46-48 (slip op.).) In allocating the Bond Charge, we have focused on the fact that the bond-related costs were incurred to stabilize the grid in 2001, which benefited everyone, including people who were not ratepayers in 2001, but have or will become ratepayers thereafter.⁵ (See *Order Denying Rehearing of Decision 02-11-074* [D.02-12-082], Attachment A, pp. 22-24 (slip op.).) Edison has not shown that its customers received less benefit than PG&E or SDG&E customers from a stable electric grid. Further, it has not demonstrated that requiring all customers who are similarly situated to pay the same amount for a benefit that they all receive is illegally unreasonable.⁶ Accordingly, the Decision's determination to continue to

⁵ Moreover, given the nature of the costs and the period over which the bonds would be paid, the Commission concluded that it would not be equitable to use a strict cost causation methodology to allocate the Bond Charge, since future ratepayers who will pay the Bond Charge will only receive the benefits of DWR's grid-stabilizing activities and did not receive any of the power procured by DWR at that time. (*Order Denying Rehearing of Decision 02-11-074* [D.02-12-082], Attachment A., pp. 23-24 (slip op.).)

⁶ Edison's arguments that the Bond Charge allocation methodology should be changed are premised on its claim that the methodology was an "expedient method of allocating DWR's BCRR" and that an ALJ Ruling had suggested that the Commission would adopt a different allocation methodology in the future. Edison's claims are surprising. The Commission issued the Bond Charge Decision after conducting a workshop and three days of evidentiary hearings, as well as receiving substantial testimony and briefing from the parties. (*Order Denying Rehearing*

use the allocation methodology adopted in the Bond Charge Decision does not violate section 451.⁷

Edison next challenges the Decision on the grounds that it is inconsistent with the allocation methodology adopted for DWR's Power Charge in D.02-02-052. However, Edison fails to recognize that we had considered allocating the Bond Charge based on the methodology adopted in D.02-02-052 and determined that responsibility for the bond costs could not be allocated on a cost causation basis since the bond costs were incurred in the past and "the charge is not in proportion to the direct benefit received by each customer paying for the charge." (*Order Denying Rehearing of Decision 02-11-074* [D.02-12-082, Attachment A, pp. 23-24 (citing *Opinion Adopting a Rate Agreement Between the Commission and the California Department of Water Resources* [D.02-02-051], p. 50) (slip. op.).) Thus, there is no inconsistency merely because we continue to reject using the methodology adopted in D.02-02-052 for allocating the Power Charge to also allocate the Bond Charge.

Edison further argues extensively that there is no "substantive difference" between the Bond Charge and the Power Charge, and thus, each must be allocated in the same manner. We disagree. Edison has failed to provide a convincing explanation why the Bond Charge, which pays for costs incurred in 2001 to stabilize California's electricity grid, should be treated in the same manner

of Decision 02-11-074 [D.02-12-082], Attachment A, pp. 6-7 (slip op.).) While the proceeding was conducted over a four-month period and could be considered "expedited", it is hard to understand how the methodology could be considered "expedient" in light of the extensive evidence provided to the Commission. Moreover, Edison's reliance on the ALJ Ruling is unfounded, since nothing in the Bond Charge Decision indicates that the Commission was contemplating a future change or modification of the allocation methodology. (See generally Pub. Util. Code, §§ 310 & 1708.)

⁷ Edison's claim could be considered a collateral attack on the Bond Charge Decision, as it is essentially challenging the legality of the allocation methodology adopted in that decision. However, the Bond Charge Decision was issued over a year ago and is now a final order. Thus, to the extent that the rehearing application constitutes such an attack, it is precluded under section 1709. (See *People v. Western Airlines, Inc.* (1954) 42 Cal.2d 621, 630.)

as the Power Charge, which pays for ongoing purchases made by DWR.⁸ Further, its arguments ignore the policy reasons we articulated for adopting an equal cents/kWh allocation. These included: (1) the long period of time over which the bond charges would be collected; (2) the benefits of a stable electricity grid, which benefited everyone, including those did not receive any power from DWR at that time; (3) the lack of a relationship between the cost and price of producing electricity at the height of the energy crisis, when the bond costs were incurred; and (4) the extraordinary nature of the bond costs. (See *Order Denying Rehearing of Decision 02-11-074* [D.02-12-082], Attachment A, pp. 24-25 (slip op).) At most, Edison's arguments demonstrate a disagreement with our decision to retain our policy. (D.04-01-028, p. 10.) However, this policy disagreement does not require granting rehearing.

Additionally, Edison contends that the Decision violates section 1757(a)(4)⁹ based on comments made by some Commissioners during public session. This assertion is without merit. Judicial review under section 1757(a)(4) considers whether the decision is supported by record evidence. (See, 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 362, p. 412.) As Edison acknowledges, these comments are not part of the administrative record. (Rhg. App., p. 8.) Furthermore, as Edison is well aware, a decision by a majority of the Commissioners is the decision of the Commission. (Pub. Util. Code, § 310.) Commission decisions speak for themselves, and the Decision fully explains why we continued to allocate the Bond Charge on an equal cents/kWh basis. (D.04-01-

⁸ Edison also contends that the Bond Charge must be allocated in the same manner as DWR's 2001-2002 Revenue Requirement because they were incurred at the same time. This argument is also without merit. As discussed above, the Bond Charge and the Power Charge have not been structured in the same fashion because the Commission has focused on the different kinds of benefits provided by DWR's activities in 2001-2002 in allocating these charges. Thus, even though the bond costs were incurred during the same time period as DWR's 2001-2002 Revenue Requirement, the Commission need not use the same allocation methodology to recover these costs.

⁹ Section 1757(a)(4) requires that a decision be supported by substantial evidence in light of the whole record.

028, p. 10.) Comments by the Commissioners during public session may provide insight into their consideration of the evidence. However, just as the comments of one legislator are not dispositive in the interpretation of legislation, comments of individual Commissioners cannot be used to impeach the text of the decision. Even if the comments had any legal effect on the Decision, which they do not, the comments simply demonstrate a concern over the policy of continuing to allocate the Bond Charge on an equal cents/kWh basis, not over the legality of the action. Therefore, any reliance on these comments to support an allegation of legal error is unwarranted. To the extent that Edison is relying on these comments to advocate a policy change, it should present its arguments in a Petition for Modification, not a rehearing application.¹⁰ (See Rule 47 of the Commission's Rules of Practice and Procedure.)

Moreover, the administrative record shows that the Decision is supported by substantial evidence. Both PG&E and SDG&E provided extensive arguments why the Commission's current allocation methodology for the Bond Charge should not be changed. (See, *Reply Brief of Pacific Gas and Electric Company Regarding the True-Up of 2001-2002 DWR Power Charge Revenue Requirement, the Interim Allocation of DWR's 2004 Power Charge Revenue Requirement, and the Allocation of DWR's 2004 Bond Charge Revenue Requirement*, filed November 14, 2003, pp. 11-18; *Reply Brief of San Diego Gas & Electric Company*, filed November 14, 2003, pp. 7-9; *Reply Comments of Pacific Gas and Electric Company on the Draft Decision of ALJ Allen*, filed January 5, 2004; *Reply Comments of San Diego Gas & Electric Company on Draft Decision of ALJ Allen*, filed January 5, 2004.) The fact that we found other policy arguments more persuasive than Edison's does not constitute legal error. (See, e.g., *Eden Hospital Dist. v. Belshe* (1998) 65 Cal.App.4th 908, 915.) Accordingly,

¹⁰ As discussed in footnote 2 above, Edison has filed a Petition for Modification of the Decision.

the Decision has met the requirement of section 1757(a)(4) and there is no basis for granting rehearing.

Finally, Edison maintains that we failed to make findings to support our decision to continue allocating the Bond Charge on an equal cents/kWh basis, as required under section 1705.¹¹ This assertion is unfounded. Section 1705 requires sufficient findings and conclusions to assist the court in ascertaining that the Commission acted properly and to assist parties in preparing for rehearing or court review. We have done so in this instance. Finding of Fact 7 notes that the Commission had previously allocated DWR's bond charge revenue requirement on an equal cents/kWh basis. (D.04-01-028, p. 18 (FOF 7).) Conclusion of Law 7 determines that equal cents/kWh allocation of DWR's Bond Charge is more consistent with prior Commission decisions. (D.04-01-028, p. 19 (COL 7).) This Finding of Fact and Conclusion of Law, along with the text in the Decision, make it clear that we have not changed our previously adopted policy on how to allocate the Bond Charge. There is no requirement that we must repeat the Findings of Fact and Conclusions of Law articulated in the Bond Charge Decision to support continued use of this allocation methodology. Thus, there is no basis for finding legal error. However, out of an abundance of caution, we shall modify Finding of Fact 7 and Conclusion of Law 7 to more clearly articulate our policy reasons for adopting an equal cents/kWh allocation methodology for DWR's Bond Charge.

In sum, we find that Edison has failed to demonstrate grounds for granting rehearing of Commission Decision (D.) 04-01-028. Accordingly, we deny Edison's application for rehearing.

¹¹ Section 1705 provides that Commission decisions shall contain "separately stated, findings of fact and conclusions of law . . . on all issues material to the order or decision." (Pub. Util. Code, § 1705.)

IT IS ORDERED that:

1. D.04-01-028 is modified as follows:
 - a. On page 18, Finding of Fact 7 is deleted and replaced with the following:

7. The Commission previously allocated DWR's bond charge revenue requirement on an equal cents per kilowatt-hour basis because: (1) the long period of time over which the bond charges would be collected breaks any linkage between those for whom the power was purchased and those responsible for repayment; (2) the benefits of a stable electricity grid benefited everyone, including those did not receive any power from DWR at that time; (3) there was little relationship between the cost and price of producing electricity at the height of the energy crisis, when the bond costs were incurred; and (4) the bond costs were not routine costs arising from utility operations, but extraordinary costs incurred by DWR at the height of the energy crisis.
 - b. On page 19, Conclusion of Law 7 is deleted and replaced with the following:

7. An equal cents per kilowatt-hour allocation of DWR's bond charge revenue requirement is more consistent with prior Commission decisions than the alternative allocation approaches proposed by Edison. In these prior decisions, we allocated the Power Charges and Bond Charges differently to reflect the fact that DWR's activities in 2001-2002 provided several different kinds of benefits.
2. Rehearing of D.04-01-028, as modified, is denied.

This order is effective today.

Dated February 11, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

I dissent.

/s/ LORETTA M. LYNCH
Commissioner

I dissent.

/s/ CARL W. WOOD
Commissioner